

Message Text

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ACTION NEA-11

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-----115857 162115Z /70

R 161213Z MAY 78
FM AMEMBASSY NEW DELHI
TO SECSTATE WASHDC 1629
INFO AMCONSUL BOMBAY
AMCONSUL CALCUTTA
AMEMBASSY COLOMBO
AMEMBASSY DACA
AMEMBASSY ISLAMABAD
AMEMBASSY KABUL
AMEMBASSY KATHMANDU
AMCONSUL MADRAS
CINCPAC

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CINCPAC FOR POLAD

E.O. 11652: N/A
TAGS: PINT, IN
SUBJECT: SHAH COMMISSION REPORTS INDICT MRS. GANDHI, SANJAY AND
OTHERS FOR ABUSE OF POWER

REFS: NEW DELHI 4044, 5444

1. SUMMARY: ON MAY 15 THE DESAI GOVERNMENT PRESENTED
TO PARLIAMENT THE TWO LONG-AWAITED INTERIM REPORTS OF
THE SHAH COMMISSION OF INQUIRY. JUSTICE SHAH'S FINDINGS
CONSTITUTE AN UNCOMPROMISING INDICTMENT OF THE FORMER
PM, HER SON SANJAY AND SEVERAL OF HER ASSOCIATES FOR
GROSS ABUSE OF POWER BOTH IN DECLARING THE EMERGENCY
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AND IN SUBSEQUENT ACTIONS. THE DELCATION OF THE
EMERGENCY ITSELF WAS AN "UNWARRANTED POLITICAL DE-
CISION." PREDICTABLY, CONGRESS (I) LEADERS DENOUNCED
THE COMISSION 'S REPORTS AS A "POLITICAL VENDETTA" AND
WARNED OF MASS PROTESTS AND AGITATIONS. THE GOVERN-
ME T'S NEXT STEPS ARE UNCLEAR. IT HAS VOWED TO
PROSECUTE INDIVIDUAL CASES OF ABUSE OF AUTHORITY, BUT

THE KEY QUESTION IS WHETHER THE GOVERNMENT CAN DEVELOP SOLID, AIR-TIGHT CASES AGAINST MRS. GANDHI AND THE OTHERS BASED ON THE FINDINGS. MRS. GANDHI HAS BEEN LARGELY SUCCESSFUL IN PORTRAYING THE SHAH COMMISSION AS AN EFFORT TO DEFAME HER CHARACTER, AND SHE AND HER SUPPORTERS ARE LIKELY TO STEP UP THEIR ATTACKS ON THE GOVERNMENT FOR THEIR "VINDICTIVENESS." END SUMMARY.

2. THE GOVERNMENT ON MAY 15 PRESENTED TO PARLIAMENT THE LONG-AWAITED TWO INTERIM REPORTS OF THE SHAH COMMISSION OF INQUIRY INTO THE "EXCESSES" OF THE EMERGENCY. THE REPORTS, BASED ON SEVERAL MONTHS OF PUBLIC TESTIMONY TAKEN BY RETIRED SUPREME COURT CHIEF JUSTICE J.C. SHAH, CONSTITUTE AN UNCOMPROMISING INDICTMENT OF MRS. GANDHI FOR GROSS ABUSE OF POWER BOTH IN DECLARING THE EMERGENCY IN JUNE 1975 AND IN SUBSEQUENT ACTIONS. THE COMMISSION'S FINDINGS FALL INTO SEVERAL MAJOR CATEGORIES:

(A) JUSTICE SHAH CONCLUDED THAT THE DECLARATION OF THE EMERGENCY ITSELF WAS "UNWARRANTED." HE FOUND THAT THERE WAS NO EVIDENCE TO SUGGEST THAT A BREAKDOWN OF LAW AND ORDER WAS IMMINENT OR THAT THERE WAS ANY INTERNAL OR EXTERNAL THREAT TO THE WELL-BEING OF THE COUNTRY. ATHER, THE DECLARATION OF THE EMERGENCY WAS A "POLITICAL DECISION TAKEN BY AN INTERESTED PRIME MINISTER IN A DESPERATE ENDEAVOR TO SAVE HERSLEF FORM LIMITED OFFICIAL USE

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THE LEGITIMATE COMPULSION OF A JUDICIAL VERDICT AGAINST HER" (I.E., THE JUNE 12 ALLAHABAD HIGH COURT JUDGEMENT WHICH FOUND MRS. GANDHI GUILTY OF CORRUPT CAMPAIGN PRACTICES). THE REPORTS ALSO CRITICIZE MRS. BANDHI FOR BYPASSING ESTABLISHED PROCEDURE BY FAILING TO CONSULT HER CABINET AND HIGH GOVERNMENT OFFICIALS BEFORE SHE ADVISED THE PRESIDENT TO IMPOSE THE EMERGENCY.

(B) THE COMMISSION FOUND MRS. GANDHI RESPONSIBLE FOR THE "ILLEGAL AND UNAUTHORIZED" ARRESTS OF MANY POLITICAL FIGURES AND OTHER PERSONS. THE REPORTS STATE THAT "MRS. GANDHI WAS RESPONSIBLE FOR DIRECTING THE ARREST AND DETENTION OF A NUMBER OF RESPECTED CITIZENS WITHOUT AUTHORITY OF LAW, MOTIVATED SOLELY BY A DESIRE TO CONTINUE TO REMAIN IN POWER."

(C) ACCORIDING TO THE COMMISSION'S FINDINGS, THERE WAS "MISUSE OF AUTHORITY AND ABUSE OF POWER" BY THE THEN-

PRIME MINISTER IN A NUMBER OF SPECIFIC CASES DURING THE EMERGENCY RELATING TO THE TRANSFER OF HIGH COURT JUDGES, THE APPOINTMENT OF OFFICERS TO SEVERAL NATIONALIZED

BANKS, THE REQUISITIONING OF A BUILDING BY THE CONGRESS PARTY IN NEW DELHI, THE HARRASSMENT OF GOVERNMENT EMPLOYEES AND THE DETENTION OF A POLITICAL OPPONENT WHO HAD WRITTEN A CRITICAL LETTER TO MRS. GANDHI. IN ADDITION, MRS. GANDHI WAS FOUND RESPONSIBLE FOR THE INSTITUTION OF UNWARRANTED CRIMINAL PROCEEDINGS AGAINST FOUR INDUSTRIES MINISTRY OFFICIALS WHO WERE COLLECTING EVIDENCE ABOUT SANJAY GANDHI'S MARUTI SCANDAL.

(C) CERTAIN HIGH OFFICIALS OF THE DELHI ADMINISTRATION, THE INTELLIGENCE BUREAU AND THE CBI WERE CRITICIZED FOR ALLOWING THEMSELVES TO BE USED AS INSTRUMENTS OF THE THEN-PRIME MINISTER. THE REPORTS LIMITED OFFICIAL USE

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CONCLUDED THAT MANY OF DELHI'S DISTRICT MAGISTRATES WERE FOUND "SERIOUSLY WANTING" BECAUSE OF THEIR WILLINGNESS "TO PANDER TO THE WHIMS OF THE CENTERS OF POWER." THE COMMISSION ALSO FOUND THAT MRS. GANDHI'S INFORMATION MINISTER, V.C. SHUKLA, HAD ABUSED HIS AUTHORITY BY CONTROLLING THE PRESS AND BY ATTEMPTING TO MANAGE THE NEWS BY MEANS OF "THOUGHT CONTROL".

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(E) SANJAY GANDHI IS THE OBJECT OF THE COMMISSION'S, HARSHTEST CRITICISM. REGARDING SANJAY'S ROLE IN DEMOLITIONS OF HOUSES IN OLD DELHI DURING THE EMERGENCY, THE REPORTS CONCLUDE THAT HIS ACTIONS COMPRISE "THE SINGLE GREATEST ACT OF EXCESS COMMITTED DURING THE EMERGENCY FOR WHICH THERE IS NO PARALLEL." THE DEMOLITIONS WERE "UTTERLY ILLEGAL AND UNCONSTITUTIONAL." "HERE WAS A YOUNG MAN WHO LITERALLY AMUSED HIMSELF WITH DEMOLISHING RESIDENTIAL, COMMERCIAL AND INDUSTRIAL BUILDINGS... WITHOUT THE SLIGHTEST REALIZATION OF THE MISERIES HE WAS HEAPING ON THE HELPLESS POPULATION."

3. THE DESAI GOVERNMENT ON MAY 15 ALSO SUBMITTED TO LIMITED OFFICIAL USE

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PARLIAMENT A "MEMORANDUM OF ACTION TAKEN" WHICH INDICATED THAT THE GOI ACCEPTED THE FINDINGS AND RECOMMENDATIONS OF THE SHAH COMMISSION. ALTHOUGH IT DID NOT SPECIFY WHAT ACTIONS IT WOULD UNDERTAKE BASED ON THE FINDINGS, THE GOVERNMENT STATED ITS INTENTION TO INITIATE PROSECUTIONS IN CERTAIN CASES AFTER CAREFUL INDIVIDUAL EXAMINATION. IN ADDITION THE GOVERNMENT INTENDED TO LAUNCH DEPARTMENTAL PROCEEDINGS AGAINST GUILTY OFFICIALS AND UNDERTAKE REMEDIAL ACTION IN THE CONDUCT OF OFFICIAL BUSINESS.

4. THE SUBMISSION OF THE TWO INTERIM REPORTS PROVOKED INEVITABLE UPROARS IN THE TWO HOUSES OF PARLIAMENT. CONGRESS (I)'S C.M. STEPHEN, LEADER OF THE OPPOSITION IN THE LOK SABHA, CONDEMNED THE REPORTS AS "INSTRUMENTS OF A POLITICAL VENDETTA" AGAINST HIS PARTY. HE WARNED THAT THE CONGRESS (I) "WILL TAKE THE MATTER TO THE PEOPLE... AND GET THE PEOPLE TO REJECT THE FINDINGS THROUGH A COUNTRYWIDE MOVEMENT." PRIME MINISTER DESAI THEN WARNED STEPHEN THAT IF THIS RECOURSE TO POLITICS OF THE STREET RESULTS IN VIOLENCE, THE GOVERNMENT WILL NOT HESITATE TO TAKE "APPROPRIATE ACTION". AT THE SAME TIME, THE CONGRESS (I) WORKING COMMITTEE MET IN DELHI TO FORMULATE A PROGRAM OF POPULAR RESISTANCE AND AGITATION IN THE EVENT THAT MRS. ANDHI IS ARRESTED. THE PARTY'S TWO GENERAL SECRETARIES DECLINED TO DIVULGE THE DETAILS

OF THIS AGITATION, BUT HINTED THE FORMER PM MAY SOON BE ARRESTED. (COMMENT: SIMILAR RUMORS OF MRS. GANDHI'S IMMINENT DETENTION HAVE SURFACED IN DELHI IN THE PAST FEW DAYS. END COMMENT).

5. THE FINDINGS OF THE SHAH COMMISSION COME AS SOMETHING OF AN ANTI-CLIMAX. THE HEARINGS HAD BEEN OPEN LIMITED OFFICIAL USE

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TO THE PUBLIC AND THE REVELATIONS AND ACCUSATIONS OF THE MANY WITNESSES WERE PROMINENTLY REPORTED IN THE PRESS. IN ADDITION, KEY PORTIONS OF THE INTERIM REPORTS, INCLUDING JUSTICE SHAH'S FINDING THAT THE EMERGENCY WAS "UNWARRANTED," HAD BEEN LEAKED TO THE PRESS.

6. THE GOVERNMENT'S STATEMENT ACCOMPANYING THE TWO REPORTS WAS CIRCUMSPECT ABOUT FOLLOW-UP ACTIONS. THE REPORTS HAD BEEN SUBMITTED TO THE GOVERNMENT TWO MONTHS AGO AND WERE CAREFULLY EVALUATED BY THE CABINET AND A COMMITTEE OF SENIOR SECRETARIES OF THE GOI. THE LONG DELAY IN MAKING THE FINDINGS PUBLIC SUGGESTS THAT THE DESAI GOVERNMENT INTENDS TO ENSURE THAT IT HAS AIR-TIGHT, PROSECUTABLE CASES AGAINST MRS. GANDHI AND HER ASSOCIATES. A REPEAT OF THE HASTY ACTION IN ARRESTING MRS. GANDHI LAST OCTOBER ON WHAT TURNED OUT TO BE INSUFFICIENT EVIDENCE WOULD ONLY FURTHER DAMAGE THE GOVERNMENT'S CREDIBILITY. THE KEY QUESTION, WHICH WE ARE UNABLE TO ANSWER AT THIS POINT, IS WHETHER THE GOVERNMENT CAN DEVELOP SOLID CASES UNDER THE INDIAN PENAL CODE BASED ON THE FINDINGS OF THE SHAH COMMISSION. IN THE INSTANCE OF THE DECLARATION OF THE EMERGENCY ITSELF, THERE APPEARS TO BE NO PROVISION OF THE CONSTITUTION OR OF THE IPC WHICH DEALS WITH ABUSE OF OFFICIAL POWER OR WITH SUBVERTING THE CONSTITUTION. SIMILARLY, ARREST OF POLITICAL OPPONENTS UNDER MISA MAY HAVE BEEN POLITICALLY MOTIVATED BUT WERE CARRIED OUT ACCORDING TO THE LETTER -- IF NOT THE SPIRIT -- OF THE LAW. GIVEN THESE AMBIGUITIES, THE GOI OBVIOUSLY WILL HAVE TO TREAD CAREFULLY (AND PERHAPS SLOWLY) IN SEEKING TO PROSECUTE THE FORMER PM AND HER ASSOCIATES FOR THEIR "EXCESSES".

7. THUS FAR, MRS. GANDHI HAS BEEN LARGELY SUCCESSFUL IN PORTRAYING THE ACTIVITIES OF THE SHAH COMMISSION AS A POLITICAL VENDETTA AIMED AT SMEARING HER REPUTATION. AT LEAST, THE OUTCOME OF THE AZAMGARH BY-ELECTION AND THE LIMITED OFFICIAL USE

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STATE ASSEMBLY ELECTIONS IN THE SOUTH IN FEBURARY SUG-
GESTS THAT PERCEPTIONS OF MRS. GANDHI'S MISDEEDS -- AS
PUBLICIZED BY THE SHAH COMMISSION HEARINGS -- HAVE NOT
REACHED THE GRASS-ROOTS IN THE COUNTRYSIDE. WITH
THE FINDINGS NOW AN OFFICIAL PUBLIC DOUCMENT (WE WILL
POUCH COPIES TO THE DEPARTMENT), MRS. GANDHI, HER
LOYALISTS AND HER PUBLICITY ORGANS (NOTABLY THE
"NATIONAL HERALD") ARE LILELY TO STEP UP THEIR ATTACKS
ON THE GOVERNMENT FOR SEEKING TO DEFAME HER CHARACTER
THROUGH THE COMMISSION.
GOHEEN

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